

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 U.S. ETHERNET INNOVATIONS, LLC,

No. C 10-3724 CW

5 Plaintiff,

6 v.

7 ACER, INC.; ACER AMERICA  
8 CORPORATION; APPLE, INC.; ASUS  
COMPUTER INTERNATIONAL; ASUSTEK  
COMPUTER, INC.; DELL, INC.;  
9 FUJITSU, LTD.; FUJITSU AMERICA,  
INC.; GATEWAY, INC.; HEWLETT  
PACKARD CO.; SONY CORPORATION;  
SONY CORPORATION OF AMERICA; SONY  
ELECTRONICS INC.; TOSHIBA  
CORPORATION; TOSHIBA AMERICA,  
INC.; and TOSHIBA AMERICA  
INFORMATION SYSTEMS, INC.,

ORDER DENYING  
WITHOUT PREJUDICE  
INTERVERNOR NVIDIA  
CORPORATION'S  
MOTION TO SEAL  
(Docket No. 755 in  
10-3724) AND  
ADDRESSING  
DEFENDANTS' AND  
INTERVENORS'  
MOTION TO SEAL  
(Docket Nos. 756  
in 10-3724 and 442  
in 10-5254)

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13  
14 Defendants,

15 INTEL CORPORATION; NVIDIA  
CORPORATION; MARVELL  
SEMICONDUCTOR, INC.; AHEROS  
COMMUNICATIONS, INC.; and  
BROADCOM CORPORATION,

16  
17 Intervenors.  
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20 U.S. ETHERNET INNOVATIONS, LLC,

No. C 10-5254 CW

21 Plaintiff,

22 v.

23 AT&T MOBILITY LLC; BARNES &  
NOBLE, INC.; CLAIRE'S BOUTIQUES,  
INC.; J. C. PENNEY COMPANY, INC.;  
24 SALLY BEAUTY HOLDINGS, INC.; ANN  
TAYLOR STORES CORPORATION; ANN  
TAYLOR RETAIL, INC.; HARLEY-  
DAVIDSON, INC.; HARLEY-DAVIDSON  
25 MOTOR COMPANY, INC.; KIRKLAND'S  
INC.; KIRKLAND'S STORES, INC.;  
26 MACY'S, INC.; MACY'S RETAIL  
HOLDINGS, INC.; MACY'S WEST  
27 STORES, INC.; NEW YORK & COMPANY,

1 INC.; LERNER NEW YORK, INC.;  
2 RADIOSHACK CORPORATION; RENT-A-  
3 CENTER, INC.; and THE DRESS BARN,  
4 INC.,

5 Defendants.

6 AND ALL RELATED CLAIMS,  
7 COUNTERCLAIMS AND THIRD-PARTY  
8 CLAIMS

9  
10 Intervenor NVIDIA Corporation moves to seal portions of the  
11 declaration of Paul Sidenblad offered in support of the motion for  
12 partial summary judgment filed by Defendants and Intervenors and  
13 Exhibits A through F to the Sidenblad declaration.

14 These documents are connected to a dispositive motion. To  
15 establish that these documents are sealable, NVIDIA "must overcome  
16 a strong presumption of access by showing that 'compelling reasons  
17 supported by specific factual findings . . . outweigh the general  
18 history of access and the public policies favoring disclosure.'"   
19 Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 679 (9th Cir. 2010)  
20 (citation omitted). This cannot be established simply by showing  
21 that the document is subject to a protective order or by stating  
22 in general terms that the material is considered to be  
23 confidential, but rather must be supported by a sworn declaration  
24 demonstrating with particularity the need to file each document  
25 under seal. Civil Local Rule 79-5(a).

26 NVIDIA has filed a declaration stating that it has designated  
27 the relevant documents as "Highly Confidential" under the interim  
28 protective order and that they contain information that "generally  
relates to: (1) highly sensitive technical information concerning  
NVIDIA products accused by USEI; (2) a confidential license

1 agreement and communication between NVIDIA and 3Com Corporation;  
2 and (3) highly sensitive NVIDIA source code." Gregorian Decl.

3 ¶ 3.

4 NVIDIA only describes the subject matter of the exhibits and  
5 makes conclusory statements that it considers the material to be  
6 confidential or sensitive. NVIDIA has failed to state what harm  
7 it would experience if this material were publicly disclosed or to  
8 provide any specific reasons, supported by facts, that could  
9 outweigh the public policy favoring public access to court  
10 filings.

11 Accordingly, NVIDIA's motion to file under seal is DENIED.  
12 Pursuant to Civil Local Rule 79-5(f), within four days of the date  
13 of this Order, NVIDIA may re-submit the documents for filing in  
14 the public record or it may retain the documents and not make them  
15 part of the record in this case. Alternatively, by that date,  
16 NVIDIA may renew its request to file under seal, supported by a  
17 proper declaration that establishes that the documents are  
18 sealable as discussed above.

19 Intervenor Intel Corporation has filed a motion to seal on  
20 behalf of all Defendants and Intervenors seeking to file under  
21 seal the following documents: (1) their motion for partial summary  
22 judgment; (2) the declaration of Jesse Brandenburg with Exhibit 1;  
23 (3) the declaration of Itamar Sharoni with Exhibits 1-3; (4) the  
24 declaration of Thomas Insley with Exhibits A and B; (5) the  
25 declaration of John R. Schiffhauer; and (6) the declaration of  
26 Justin Constant with Exhibits A.1 through A.24. In the motion,  
27 Defendants and Intervenors state that the "Brandenburg and Sharoni  
28 Exhibits contain highly confidential descriptions of Intel source

1 code and products, and attach excerpts of design documents that  
2 Intel maintained as confidential, and information from Intel's  
3 source code version control database," and that the "Insley  
4 declaration discusses financial and licensing information that  
5 Intel maintains as highly confidential." Docket No. 756, 2-3.  
6 They also state that the "Constant Declaration contains exhibits  
7 that pertain to confidential third-party licenses and licensing  
8 practices, third-party sales and financial data, and deposition  
9 testimony designated" as confidential under the interim protective  
10 order. Id. at 3. They further state that the motion for partial  
11 summary judgment "discusses the confidential information contained  
12 in the supporting declarations and exhibits attached thereto."  
13 Id.

14 Intel has submitted a declaration in support of the motion to  
15 seal in which it states that "Local Rule 79-5(d) provides the  
16 mechanism for Defendants and Intervenors to submit that material  
17 under seal." Stephens Decl. ¶ 2. However, Local Rule 79-5(d)  
18 sets forth the procedure for a party to file under seal  
19 information that has been designated as confidential by another  
20 party, not by itself. To the extent that Defendants and  
21 Intervenors seek to file under seal documents or information that  
22 they themselves have designated as confidential, as appears to be  
23 the case for at least the Brandenburg, Sharoni and Insley  
24 declarations and their attached exhibits, Local Rule 79-5(b) and  
25 (c) provide the relevant procedure.<sup>1</sup> The Court notes that, in the

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26       <sup>1</sup> They do not address why they seek to seal the Schiffauer  
27 declaration or which party or non-party has designated that  
28 document as confidential.

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1 only supporting declaration filed thus far, Intel has not provided  
2 compelling reasons to seal these documents.<sup>2</sup> In addition,  
3 although Defendants and Intervenors suggest that non-parties have  
4 designated the exhibits to the Constant Declaration as  
5 confidential, they have not disclosed who these non-parties are or  
6 provided proof that they have served these non-parties with notice  
7 of their motion to seal.

8 Accordingly, within one day of the date of this Order,  
9 Defendants and Intervenors shall file a declaration setting forth  
10 which party or non-party has designated each of the relevant  
11 documents or information as confidential and shall provide proof  
12 that they have served all non-parties with their motion to seal  
13 and information about which documents and information they are  
14 attempting to file. If Defendants and Intervenors themselves are  
15 the designating party, by that date, Defendants and Intervenors  
16 shall also file their declarations in support of their motion to  
17 seal, providing compelling reasons to seal the information.

18 In the future, when filing motions to seal, all parties shall  
19 make clear which party or non-party has designated as confidential  
20 each purportedly sealable document and, if relevant, shall provide  
21 proof of service upon non-parties.

22 IT IS SO ORDERED.

23  
24 Dated: 5/17/2013

  
CLAUDIA WILKEN  
United States District Judge

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26 <sup>2</sup> As discussed above, because Defendants and Intervenors seek  
27 to seal documents related to a dispositive motion, the compelling  
28 reason standard applies to the motion to seal, not a good cause  
standard.